BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.85.207, 37.86.2820, 37.86.2907, 37.86.2932, 37.86.3001, 37.86.3020, and 37.86.4406 pertaining to inpatient hospital, outpatient hospital, and Rural Health Clinic (RHC) services	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On July 27, 2007, at 10:00 a.m., a public hearing will be held in the Wilderness Room, 2401 Colonial Drive, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on July 16, 2007, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; e-mail dphhslegal@mt.gov.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.85.207 SERVICES NOT PROVIDED BY THE MEDICAID PROGRAM

(1) remains the same.

(2) The following medical and nonmedical services are explicitly excluded from the Montana Medicaid program ~~except for those services covered under the health care facility licensure rules of the Montana department of public health and human services when provided as part of a prescribed regimen of care to an inpatient of a licensed health care facility~~, except for those services specifically available, as listed in ARM 37.40.1406, 37.90.402, and Title 37, chapter 34, subchapter 9 to persons eligible for home and community-based services; and except for those Medicare covered services, as listed in ARM 37.83.812 to qualified Medicare beneficiaries for whom the Montana Medicaid program pays the Medicare premiums, deductible, and coinsurance:

(a) through (d) remain the same.

(e) physical therapy aide services, except as provided in ARM 37.86.601, 37.86.605, 37.86.606, and 37.86.610 ~~and 46.12.529~~;

(f) through (k) remain the same.

(l) delivery services not provided in a licensed health care facility or nationally

accredited birthing center unless as an emergency service. Delivery services means services necessary to protect the health and safety of the woman and fetus from the onset of labor through delivery. Emergency service is defined in ARM 37.82.102;

(m) through (4)(d) remain the same.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-2-201, 53-6-101, 53-6-103, 53-6-116, 53-6-131, 53-6-141, 53-6-402, MCA

37.86.2820 DESK REVIEWS, OVERPAYMENTS, AND UNDERPAYMENTS

(1) remains the same.

(2) For cost reporting purposes ~~W~~where the department finds that an overpayment has occurred, the department will notify the provider of the overpayment.

(a) ~~In the event of an overpayment, the department will, within 30 days after the day the department notifies the provider that an overpayment exists, arrange to recover the overpayment by set-off against amounts paid for hospital services or by repayments by the provider.~~ The provider will have 60 days from the date of the initial notification to repay the amount of the overpayment or to have an agreed upon repayment schedule. If the provider does not repay the whole overpayment within 60 days or defaults on a payment schedule, the department will make deductions from any payments the state of Montana makes to the provider. Recovery will be undertaken even though the provider disputes in whole or part the department's determination of the overpayment and requests a fair hearing.

(b) ~~If repayment is not made within 30 days after notification to the provider, the department will make deductions from rate payments with full recovery to be completed within 60 days from the date of the initial request for payment. Recovery will be undertaken even though the provider disputes in whole or in part the department's determination of the overpayment and requests a fair hearing.~~ The amount of the overpayment constitutes a debt due the department as of the date of the initial notification to the provider and may be recovered from any person, party, transferee, or fiduciary who has benefited from either the payment or from the transfer of assets.

(3) For cost reporting purposes ~~I~~in the event an underpayment has occurred, the department will reimburse the provider within ~~30~~ 60 days from the date of the initial notification to the provider ~~following the department's determination of the amount~~.

~~(a) The amount of any overpayment constitutes a debt due the department as of the date of initial request for payment and may be recovered from any person, party, transferee, or fiduciary who has benefited from either the payment or from a transfer of assets.~~

(4) Providers aggrieved by adverse determinations by the department may request an administrative review and fair hearing as provided in ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2907 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, DRG PAYMENT RATE DETERMINATION (1) The department's DRG prospective payment rate for inpatient hospital services is based on the classification of inpatient hospital discharges to DRGs. The procedure for determining the DRG prospective payment rate is as follows:

(a) through (b) remain the same.

(c) The department computes a Montana average base price per case. This average base price per case is $1980 excluding capital expenses, medical education, and disproportionate share hospital payments effective for services provided from August 1, 2003 through December 31, 2005. For services provided January 1, 2006 through June 30, 2006, the average base price per case is $2037 excluding capital expenses, medical education, and disproportionate share hospital payments. For services provided between July 1, 2006 and September 30, ~~2006~~ 2007, the average base price is $2118 excluding capital expenses, medical education, and disproportionate share hospital payments. For services provided on or after ~~October 1, 2006, the average base price is $2025~~ October 1, 2007, the average base price is $2187 and for services on or after July 1, 2008, the average base price is $2220 excluding capital expenses, medical education, and disproportionate share hospital payments.

(d) through (2)(c) remain the same.

(3) The Montana Medicaid DRG relative weight values, average length of stay (ALOS), and outlier thresholds are contained in the DRG Table of Weights and Thresholds (effective October 1, ~~2006~~ 2007) published by the department. The department adopts and incorporates by reference the DRG Table of Weights and Thresholds (effective October 1, ~~2006~~ 2007). Copies may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA
IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2932 MEDICAID INPATIENT UTILIZATION RATE (1) A hospital's Medicaid inpatient utilization rate is the hospital's percentage rate computed by dividing the total number of Medicaid inpatient days in the hospital's fiscal year by the total number of the hospital's inpatient days in that same period.

(2) through (3)(a) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.3001 OUTPATIENT HOSPITAL SERVICES, DEFINITIONS

(1) through (4) remain the same.

(5) "Conversion factor" means a base rate initially calculated by CMS and used to translate APC relative weights into dollar payment rates ~~an adjustment equal to Medicare's highest urban rate for Montana as published at 67 Federal Register~~

~~(FR) 43616 (June 28, 2002)~~.

(6) through (19) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.3020 OUTPATIENT HOSPITAL SERVICES, OUTPATIENT PROSPECTIVE PAYMENT SYSTEM (OPPS) METHODOLOGY, AMBULATORY PAYMENT CLASSIFICATION (1) Outpatient hospital or birthing center services that are not provided by exempt hospitals or critical access hospitals as defined in ARM 37.86.2901(4) and (8) will be reimbursed on a rate-per-service basis using the Outpatient Prospective Payment System (OPPS) schedules. Under this system, Medicaid payment for outpatient services included in the OPPS is made at a predetermined, specific rate. These outpatient services are classified according to a list of APCs published annually in the Code of Federal Regulations (CFR). The rates for OPPS are determined as follows:

(a) The department uses a conversion factor for each APC group as defined at ARM 37.86.3001~~(2)~~(5). The conversion factor for August 1, 2003 through September 30, 2007 is $47.75. The conversion factor for October 1, 2007 through June 30, 2008 is $49.71. The conversion factor for services on or after July 1, 2008 is $50.61. The APC based fee equals the Medicare specific relative weight for the APC times the conversion factor that is the same for all APCs with the exceptions of services in ARM 37.86.3025. APCs are based on classification assignment of CPT/HCPCS codes.

(b) through (2) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.4406 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, SERVICE REQUIREMENTS (1) and (2) remain the same.

(3) RHC services are covered by Montana Medicaid when provided in accordance with these rules to a recipient at the clinic, the recipient's residence or ~~a hospital or~~ other medical facility. RHC services are not covered by Montana Medicaid when provided to a hospital patient.

(4) through (7) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

3. The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.85.207, 37.86.2820, 37.86.2907, 37.86.2932, 37.86.3001, 37.86.3020, and 37.86.4406 pertaining to Medicaid reimbursement for inpatient and outpatient hospital services and Rural Health Clinic (RHC) services. The purpose of the proposed rule amendments is to clearly state the department's intention to reimburse only nationally accredited birthing centers for Medicaid services. The department wishes to extend the time allowed for a provider to repay

Medicaid reimbursement to which it was not entitled and to specify in the rule pertaining to Medicaid utilization that Medicaid's disproportionate share (DSH) calculations are based on inpatient utilization. It also wishes to add a legislatively mandated provider rate increase to inpatient and outpatient services provided in hospitals reimbursed under a prospective payment reimbursement system. The proposed RHC rule amendment allows the department to conform to Medicare site of service practices.

ARM 37.85.207

The proposed amendment to this rule enumerating services not covered by Medicaid would clearly state the department's intention to reimburse nationally accredited birthing centers as well as licensed health care facilities. As written, the rule was difficult for providers and program staff to interpret. In addition, the department recently added rules for reimbursing birthing centers. The department is adding "nationally accredited birthing centers" as a covered entity for births in order to distinguish them from health care facilities. This change would affect two birthing centers. There would be no financial effects on birthing centers or health care facilities as a result of this proposal.

ARM 37.86.2820

For cost reporting purposes, department fiscal rules and practice allow 60 days for a provider to repay Medicaid reimbursement that it was not entitled to. A Legislative Audit Division audit revealed that this rule, pertaining to hospitals, was more restrictive than department policies and practices pertaining to other health care providers. The proposed amendment would correct that inequity. This proposed amendment would affect 59 in-state hospitals and approximately 40 out-of-state hospitals. The department cannot predict the financial effect on hospitals, but any effect would be mildly beneficial.

ARM 37.86.2907

On June 1, 2007, House Bill 2 (HB 2), 2007 Laws of Montana, chapter 5, became law. It appropriated money for a Medicaid rate increase to inpatient hospital services reimbursed under the prospective payment system. The proposed amendments are necessary to implement the rate increase and to withdraw a proposed rate decrease in October 2006 that was never implemented. The proposed inpatient rate increase for physical and mental health is $828,058 for SFY 08 and $1,625,792 for SFY 09.

A Diagnosis Related Group (DRG) base rate decrease was proposed in the original filing of the October 1, 2006 inpatient hospital rule. After responses to comments and further analysis by the department, it was determined that this cut did not need to be made and a proposal to delete this amendment was read at the hearing. Removal of the rate reduction language was inadvertently left in the final rule.

Because the effective date of the HB 2 rate increase is October 1 instead of July 1, 2007, the amount of the increase is greater in October 2007 than in July 2008. The average base price increased from $2118 to $2187 effective October 1, 2007 and to $2220 effective July 1, 2008.

This proposed rule change also incorporates the annual DRG rebase in October of each year. The rebase is budget neutral.

ARM 37.86.2932

Rules regarding Medicaid's disproportionate share hospital (DSH) calculations are based on inpatient utilization. This was clearly stated in all rules pertaining to DSH except this rule pertaining to Medicaid utilization. This proposal would add the term "inpatient" to this section, making it consistent with other rules. This proposal would affect 59 in-state hospitals and would have no financial impact.

ARM 37.86.3001 and 3020

The department has used the Center for Medicare and Medicaid Services' (CMS's) June 2002 conversion rate since the inception of the Outpatient Prospective Payment System (OPPS) in August 2003. The proposed amendment to these rules provides for a legislatively mandated (HB 2) rate increase to outpatient hospital services reimbursed under the prospective payment system. The proposed outpatient rate increase for physical and mental health is $527,340 SFY 08 and $1,028,519 for SFY 09.

Because the first year increase takes place October 1 of 2007, the amount of the increase is greater in October 2007 than in July 2008. The conversion factor increased from $47.75 to $49.71 effective October 1, 2007 and to $50.61 effective July 1, 2008.

ARM 37.86.4406

The department proposes to amend the sites of service for Rural Health Care (RHC) providers to no longer include hospitals. This will conform Medicaid sites of service to that practiced by Medicare providers. The department considered and rejected the option of continuing to allow RHC providers to practice in hospitals but determined that this option causes confusion on the part of RHC providers.

The purpose of the proposed new rule amendment is to conform Medicaid policy to Medicare practice.

Fiscal effects

The department expects the proposed amendments to ARM 37.85.207, 37.86.2820, and 37.86.2932 to be budget neutral to the state. None of the affected medical service providers would experience a detrimental financial effect.

The proposed changes to ARM 37.86.2907, 37.86.3001, and 37.86.3020 are expected to increase reimbursement to inpatient and outpatient hospital services for prospective payment hospitals.

The department expects the proposed amendment to ARM 37.86.4406 to have no effect on the 49 RHC facilities that are enrolled Medicaid providers in Montana as of the date of publication of this notice. They receive approximately $4.0 million in Medicaid reimbursement annually. No fiscal impact on state or federal funds and no material effect on Medicaid recipients or RHCs is anticipated.

4. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

5. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on August 2, 2007. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

/s/ Barbara Hoffmann
Rule Reviewer

/s/ John Chappuis for
Director, Public Health and Human Services

Certified to the Secretary of State June 25, 2007.